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March 29, 2005

State of Delaware  
Office of State Planning Coordination  
540 S. DuPont Highway  
Thomas Collins Building, 3<sup>rd</sup> Floor  
Dover, DE 19901

Attn: Ms. Constance C. Holland, AICP  
Director

Re: SK Pepper Creek Property  
PLUS Review  
GMB Job No. 2004.047

Dear Ms. Holland:

Listed below are our official responses to the Delaware State Planning Coordination PLUS review comments for the proposed plans for the Landings at Pepper Creek project. For your convenience we have repeated the comment before providing our response.

Included in the response package are 3 copies of the updated preliminary plat for your review.

**Office of State Planning Coordination – AnnMarie Townshend**

1. **Comment:** *Portions of the project are located within the "Investment Level 3" and "Investment Level 4" areas. We recommend that you redesign the project to include more functional and natural open space.*

**Response:** Functional open space has been improved in a number of areas on the plan. The Stormwater management ponds have been significantly reduced in size to open up acreage for both active recreation and open space. A majority of the open space that was previously between the property line and proposed lots is now shifted into the development where it can be easily accessed and viewed by the entire community. The flag lot along the eastern side of the property was removed and it is now reconfigured to allow for a large open area currently proposed as a dog exercise location. Tot Lots have been added in two easily accessible locations along the main entrance road. Smaller open space areas throughout the development have been included and are to be landscaped. Additional trails were added to the proposed trail system to improve access to these areas.

JAMES R. THOMAS, JR., PE  
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JERRY KOTRA  
RONALD L. NOBLE  
C. RICHARD ROHM

**State Historic Preservation Office (SHPO) – Anne McCleave**

1. Comment: Access to the site in order to document potential historic properties surrounding the subject property including house preservation if possible.

**Response:** The current plan does not incorporate plans to restore the house located in the southwest corner of the property. Access will be provided to the State Historic Preservation Office prior to demolition.

2. Comment: Historic and prehistoric archaeological sites must comply with Section 106 of the National Historic Preservation Act (36 CFR 800) and consider the project's effects on historic resources

**Response:** No federal involvement is anticipated at this time. If at any time there is federal involvement, it has been noted that compliance with Section 106 of the National Historic Preservation Act will be required.

3. Comment: In regard to future development proposed to take place on the north side of Piney Neck Road, Please keep the two (2) historic properties flanking the subject parcel in mind during the design stages and include landscaping on the west and east edges of the future development to help minimize the visual effects.

**Response:** We will consider the potential impact on these historic properties when design is initiated on this area.

**Department of Transportation – Bill Brockenbrough**

1. Comment: Provide a minimum right-of-way width of 30 feet from the centerline on local roads.

**Response:** Our survey indicates the existing right-of-way for Piney Neck Road is 40 feet and the current distance from the centerline is 20 feet. To meet the 30 foot minimum requirement, an additional 10 feet of dedicated right-of-way has been shown on the updated plan.

2. Comment: Provide a 15-foot wide permanent easement adjacent to the new right-of-way line. The developer will be required to build a paved multi-modal path in both easements to connect the two (2) developments unless the



*plan becomes invalid in some way then Del-DOT will re-evaluate their position.*

**Response:** A 15 foot permanent easement adjacent to the right-of-way has been shown on the updated plan. A review of the adjacent Pepper Creek development preliminary plan does not indicate a proposed multi-modal path. If the neighboring property is able to be developed and a multi-modal path is proposed in the final design the dedicated easement will be available to continue this path along the portion of the proposed development as requested.

3. **Comment:** *The developer will be required to improve Piney Neck Road from the east limit of the site frontage to the east limit of the improvements done in association with the adjoining Pepper Creek subdivision. Those improvements consist of an overlay of the existing road and widening to a 10-foot lane and a five-foot shoulder where the property has frontage.*

**Response:** We are aware of the required improvements to be performed in conjunction with the proposed development.

4. **Comment:** *Driveway connections should be provided from Anchor Watch Loop to the two (2) outparcels and the one (1) property adjacent to the development's east edge, such that those properties could be connected to the development instead of directly to Piney Neck Road in the future.*

**Response:** It is our opinion that supplying driveway access to outparcels not included as part of the proposed development will interrupt the continuity of the proposed development and will be a detractor to the overall look and feel.

5. **Comment:** *The developer's site engineer should contact the DelDOT Subdivision Manager for Sussex County, Mr. John Fiori, regarding their specific requirements for the design of the road improvements and site entrance. Mr. Fiori may be reached at 302/760-2260.*

**Response:** Preliminary discussions regarding the required improvements have been initiated between Mr. John Fiori and Mr. Bill Brockenbrough of DELDOT and Mr. Carl Wilson of the Traffic Group, Inc. These discussions were consistent with the proposed improvements outlined here. Close coordination with DELDOT will continue through all phases of the design so that the final product will include all specific design requirements of DELDOT.

**The Department of Natural Resources and Environmental Control – Kevin Coyle**

1. **Comment:** Soils on the subject parcel are fairly well drained, but they have limitations associated with rapidly permeable sandy surface and subsurface horizons. Such soils are conducive to nutrient leaching via groundwater or surface runoff into the surrounding watershed. In soils containing shallow water tables or found in close proximity to waterbodies, impacts are greatly intensified.

**Response:** Soils conditions and leaching concerns have been noted and will be considered when infrastructure such as Stormwater management and sediment and erosion control devices are designed.

2. **Comment:** Estuarine wetlands are included in the parcel along Pepper Creek. Please note that impacts to these wetlands are regulated by both the DNREC Wetlands and Subaqueous Lands Section and the Army Corps of Engineers through the Delaware Subaqueous Lands Act and Section 404 of the Federal Clean Water Act. Individual 404 permits and certain Nationwide Permits from the Army Corp of Engineers require 401 Water Quality Certification from the DNREC Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification for the DNREC Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process.

**Response:** If any wetlands are to be impacted, the appropriate State and federal permits will be applied for.

3. **Comment:** There is strong evidence that federally regulated wetlands exist on site, a wetland delineation, in accordance with the methodology established by the Corps of Engineers Wetlands Delineation Manual, should be conducted. Once complete, this delineation should be verified by the Corps of Engineers through the Jurisdictional determination process.

**Response:** A wetland delineation is in process, the verification through the Corps of Engineers Jurisdictional Determination process will be completed prior to final approval. (Who is doing the delineation – no DE state wetlands are shown on the state map according to Ed?

4. **Comment:** Vegetated no-mow buffer zones of no less than 100 feet should be employed from the edge of the wetlands and/or waterbodies. DNREC and Army Corps of Engineers discourage allowing lot lines to contain wetlands.



**Response:** A 50 foot shoreline buffer has been shown. No lot lines have been shown within 100 feet of the shoreline. The marina parcel contains all land within 100 feet, final configuration of the marina parcel will be submitted for review.

5. **Comment:** As this project is adjacent to the receiving waters of Inland Bays, these ERES waters are recognized as special assets of the State and shall be protected and/or restored to the maximum extent practicable to their natural condition. Development of a "pollution control strategy" to reduce non-point sources of nutrient runoff through Best Management Practices (BMP's) should be implemented.

**Response:** Concern has been noted and BMP's with a "pollution control strategy" will be implemented.

6. **Comment:** Reduction of nitrogen and phosphorus loading will be mandatory. The western portion of the watershed is designated as a high reduction zone and requires a reduction of nitrogen and phosphorus by 85 and 65 percent respectively. This project is within the high nutrient reduction zone.

**Response:** Concern has been noted and appropriate measures will be taken to meet the required nutrient loading reductions.

7. **Comment:** A full nutrient accounting process known as nutrient budget should be prepared to verify compliance with the TMDL mandate.

**Response:** This will be completed and submitted for approval prior to final approval.

8. **Comment:** The effluent concentration levels from onsite/community wastewater disposal systems should not exceed an average annual nitrogen and phosphorus concentration level of 5 and 2 mg/l, respectively,

**Response:** The community wastewater treatment facility will be designed to meet the minimum effluent limits required by the state of Delaware.

9. **Comment:** Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping ratio will exceed 50,000 gallons per day at any time during operation.

*All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule.*

**Response:** A dewatering permit and a water allocation permit will be secured prior to any dewatering.

10. **Comment:** A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through Sussex Conservation District.

**Response:** A sediment and Stormwater plan will be submitted and approved prior to any dewatering.

11. **Comment:** A pre-application meeting with the Sussex Conservation District to discuss the sediment and erosion control and stormwater management components of the plan is recommended. Site topography, soils mapping, and pre and post development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion.

**Response:** A pre-application meeting with Sussex Conservation District will be scheduled.

12. **Comment:** A Notice of Intent (NOI) for Stormwater Discharges associated with construction activity must be submitted to DNREC Division of Soil and Water Conservation along with the \$195 NOI fee prior to plan approval.

**Response:** A NOI with the application fee will be submitted.

14. **Comment:** Each stormwater management facility should have an adequate outlet for release of stormwater. Any drainage conveyed onto this site from neighboring properties must be adequately conveyed through the site to the discharge point without interruption.

**Response:** Stormwater management will be addressed in the Stormwater plan.

15. **Comment:** A Certified Construction Reviewer (CCR) will be required for the site during construction.

**Response:** The need for a CCR has been noted.



16. Comment: Due to the proximity of the site to a tidal water body, the District recommends seeking a waiver from stormwater management quantity control citing the Delaware Sediment and Stormwater Regulations, § 3.2 paragraph B item 2.

**Response:** A waiver from quantity will be applied for.

17. Comment: Portions of the property are within the 100-year floodplain. It is recommended that buildings be limited to areas outside the floodplain and above the base flood elevation.

**Response:** No construction of habitable structures is proposed within the 100-year floodplain.

18. Comment: Dialogue should continue regarding the Bald Eagle nest sites with the U.S. Fish and Wildlife Service (USFWS) and we also request that Kitt Heckscher, DNREC Program Zoologist, be included in correspondence regarding this issue.

**Response:** Dialogue regarding the Bald Eagle nest site will continue as appropriate.

19. Comment: Preservation of the remaining trees along Love Creek is recommended as they fall under the USFWS protection zones of Bald Eagle nests.

**Response:** It appears that "Love Creek" is a typo and the intent was to refer to Pepper Creek. The development has been configured with the intent to preserve the area along Pepper Creek. Although it is likely that some tree removal will be required, the majority of the trees in this area will remain.

20. Comment: DNREC recommends increasing the proposed wetland buffer from 50 feet to 100 feet (preferable 300 ft.). The buffer should be planted with native grasses, wildflowers, shrubs or trees.

**Response:** A 50 foot shoreline buffer has been shown. No lot lines have been shown within 100 feet of the shoreline. The marina parcel contains all land within 100 feet, final configuration of the marina parcel including vegetated buffer separations will be submitted for review.

21. Comment: The area designated as "Future Development Area" is forested and we strongly encourage preservation as large portions of forest have been lost for migratory birds.

**Response:** The concern regarding this location has been noted. We will note this request when design regarding this area is finalized.

22. **Comment:** *The site plans show no consideration for open space or buffers. The developer should consider increasing the amount of open space along the waterfront and increasing the recreational opportunities associated with it.*

**Response:** The proposed club house and pool area was shifted closer to the waterfront. The marina parcel contains all waterfront land, final configuration of the marina parcel including open space and buffer separations will be submitted for review.

23. **Comment:** *The small forested area on the eastern portion of the project site should be preserved and maintained as a part of community open space. Any lands set aside for conservation purposes should be placed into a permanent conservation easement or other binding protection mechanism. These areas should be clearly marked and delineated so that residents understand their importance and so that homeowner activities do not infringe upon these areas.*

**Response:** With the exception of tree removal for the building sites and driveways, no additional tree removal is proposed. During final design, the developer will evaluate options such as shared driveway areas to minimize tree removal.

24. **Comment:** *It is recommended that more open space for active recreation be incorporated in the design. Storm water management ponds are required infrastructure and we discourage building recreational facilities adjacent to storm water basins where standing water and the potential for flash flooding exist.*

**Response:** Active recreation has been improved in a number of areas on the plan. The Stormwater management ponds have been significantly reduced in size to open up acreage for both active recreation and open space. A majority of the open space that was previously between the property line and proposed lots is now shifted into the development where it can be easily accessed and viewed by the entire community. The flag lot along the eastern side of the property was removed and it is now reconfigured to allow for a large open area currently proposed as a dog exercise location. Tot Lots have been added in two easily accessible locations along the main entrance road. Smaller open space areas throughout the development have been



included and are to be landscaped. Additional trails were added to the proposed trail system to improve access to these areas.

26. Comment: *If a trail system is planned, it is recommended that a series of stacking trail loops be designed with access points in each subdivision "pod" and connections to adjacent communities.*

**Response:** Additional trails were added to the proposed trail system to improve access to subdivision "pod" areas as well as proposed active recreation areas.

27. Comment: *It is recommended that sidewalks be built fronting every residence and stub streets. A stub street is recommended to the west allowing increased mobility for bicyclists and pedestrians.*

**Response:** Sidewalks are proposed along all residential roads.

28. Comment: *Boat facilities currently exist on-site. It is unclear what, if any, the plans for a marina are at this facility. From the site plan submitted, it does not appear that adequate space for parking, restrooms, etc. has been allocated.*

**Response:** The marina permit application has been submitted to DNREC, which includes a parking plan. It is an existing facility from 1946 and is to be rehabilitated to a "BMP" standard.

29. Comment: *Marina development is regulated by the State of Delaware Marina Regulations and/or the State of Delaware Regulations Governing the Use of Subaqueous Lands Section. The State discourages the use of State waters for the storage of boats and has a strong preference for alternatives such as boat ramps. The developer is strongly encouraged to attend a Joint Permit Processing meeting to discuss their proposed plans with resource agencies.*

**Response:** The proposed marina, including parking has been submitted separately to DNREC. Prior to this submission, Ed Laney (ERI) had several informal discussions as to the specifics of the project. The comments from those officials have been incorporated into the submission. (See comment response #28).

30. Comment: *If plans for the marina progress, the developer is encouraged to become a certified "Clean Marina".*

**Response:** The proposed marina, including parking has been submitted separately to DNREC. (See comment response #28).

**State Fire Marshal's Office – Dwayne Fox**

1. Comment: Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20 psi residual pressure is required. Fire hydrants with 800 feet spacing on center.
2. Where a water distribution system is proposed for single family dwellings it shall be capable of delivering at least 500gpm for 1-hour duration, at 20 psi residential pressure. Fire hydrants with 1000 feet spacing on centers are required.
3. Where a water distribution system is proposed for the site, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.
4. Dry hydrant location shall be shown for the marina standpipe system.
5. All structures over 10,000 sq. ft. aggregate will require automatic sprinkler protection installed.
6. Buildings greater than 10,000 sq. ft., 3-stories or more, or over 35-feet, or classified as High Hazard, are required to meet fire lane marking requirements.
7. Show Fire Department Connection location (must be within 300 feet of fire hydrant) and detail as shown in the DSFPR.
8. Show Fire Lanes and Sign Detail as shown in DSFPR.
9. All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from Piney Neck Road must be constructed so fire department apparatus may negotiate it.
10. Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 feet of the front door.
11. Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38-feet. The dimensions of the cul-de-sac or



*turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn-around.*

12. *If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.*
13. *Gas Piping & System Information: Provide type of fuel proposed, and show locations of bulk containers on plan.*
14. *Required Notes: Provide a note on the final plans submitted for review to read "All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations".*
  - *Proposed Use.*
  - *Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units.*
  - *Square footage of each structure (Total of all Floors).*
  - *NFPA Construction Type.*
  - *Maximum Height of Building (including number of stories).*
  - *Note indicating if building is to be sprinklered.*
  - *Name of Water Provider.*
  - *Letter from Water Provider approving the system layout.*
  - *Provide Lock Box Note if Building is to be sprinklered.*
  - *Provide Road Names, even for County roads.*
15. *Preliminary meeting with fire protection specialists are encouraged prior to formal submittal.*

**Response:** All items will be considered and/or utilized for the water supply system design. Additional notes and details will be included with the final design submittal.

**Department of Agriculture – Mark Davis**

1. *Comment: Preservation of trees during the construction process is recommended.*

**Response:** Concern will be noted on final plans.

2. *Comment: Use of Diverse Landscape Plan and use the "right tree for the right place" concept which encourages native trees and shrubs when possible is recommended.*

**Response:** The use of this will be incorporated into the landscape plan.

3. **Comment:** The use of forest buffers for adjacent subdivisions, critical areas and agricultural sites is recommended.

**Response:** Whenever appropriate the use of this will be incorporated into the landscape plan.

**Public Service Commission – Andrea Maucher**

1. **Comment:** Tidewater Utilities will need to file an application for a CPCN with the Public Service Commission to provide public water in these areas.

**Response:** A CPCN will be filed prior to final submittal.

2. **Comment:** Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines.

**Response:** Pipeline Safety guidelines will be followed for all pipeline construction.

3. **Comment:** If wastewater services are provided by a non-governmental entity, and there are more than 50 customers served, the wastewater service provider will need to apply to the PSC for a Certificate of Public Convenience and Necessity (CPCN).

**Response:** A CPCN will be filed prior to final submittal.

**Delaware Emergency Management Agency – Don Knox**

1. **Comment:** The developer should notify the police, fire service, and emergency medical response organization serving this portion of Sussex County to reduce the impact to public safety and apprise them of all development activities.

**Response:** Request has been noted, contact will be made with these organizations.

2. **Comment:** A small portion of this property is located in the Special Flood Hazard Area and will affect traffic along Routes 26 and 113 which are the coastal storm evacuation routes.



**Response:** Concern has been noted.

**Department of Education – Nick Vacirca**

1. **Comment:** *A package should be submitted to the Indian River School District for informational purposes since development could generate an estimated 64 additional students to the district schools.*

**Response:** Request has been noted, contact will be made with the Indian River School District.

2. **Comment:** *If homes are more than 1/2 mile from the nearest public road, you should plan streets so that large school busses can access and turn around (without backing) from the furthest areas within the development while picking up and dropping off students. Should there not be any sites more than 1/2 mile from the nearest public road, provisions for appropriate pick-up and drop-off at the development entrance should be included.*

**Response:** The proposed development has looped streets that would allow access into it without requiring backing of the school buses. As the development is within 1/2 mile of Piney Creek Road, a safe drop off and pickup location could also be located at the entrance. Discussions with the school district will include both options and the preferred alternative will be determined and included in the final design.

**Sussex County – Richard Kautz**

1. **Comment:** *Because the site is within the County's Environmentally Sensitive Development Overlay District the developer must prepare an Environmental Assessment and Public Facility Evaluation Report, and Sketch Plan. The report should include responses to the PLUS comments, in particular the SCCD recommendation to eliminate the ponds and the Fire Marshall's concerns about the flag lots.*

**Response:** It is our understanding that this report will have to be submitted prior to the public hearing. Once a draft version of this has been completed it will be submitted to the Planning and Zoning office. In regards to the specific concerns noted above, the stormwater management ponds have been significantly reduced in size to open up acreage for both active recreation and open space. The flag lots have been removed.

2. **Comment:** *The boundaries of the Marina Zoning District or the lot to be used as the commercial marina should be clearly shown on the application and site map.*


**Response:** **The boundaries have been clearly shown as a solid dark line dividing the marina parcel and the development.**

3. **Comment:** *The Sussex County Engineering Department prefers a connection to the Sussex County wastewater system. If this cannot be accomplished, then we recommend that the wastewater system be operated under a long-term contract with a capable wastewater utility that meets the TMDL limits for the Inland Bays Waterways. Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications. A review of the treatment and disposal system is required by the Sussex County Engineering Department. When Sussex County provides sewer service, it is required that the treatment system be abandoned and a direct connection made to the county system at the developers and/or homeowners association expense.*

**Response:** **If Sussex County has a collector line to the property that is available in time to coordinate with the startup, connection to the Sussex County wastewater system would be made. It is our understanding that this service will not be available in time for this to work out. In this event, a wastewater system to be operated under a long-term contract with a wastewater utility is proposed. The proposed facility would be designed to meet the TMDL's.**

Please inform us if any of these responses are unsatisfactory or if you have any additional questions.

Sincerely,



David Peek, P.E.  
Project Manager

DP/mc